MANATT HEALTH SOLUTIONS

To:	Missouri Department of Social Services
From:	Manatt Health Solutions
Date:	September 3, 2009
Subject:	State Medicaid Director Letter on Funding and Initial Planning for Administering HIT Incentives

On September 1, 2009, the Centers for Medicare & Medicaid Services (CMS) issued much awaited guidance to State Medicaid programs in a State Medicaid Director Letter (Letter) on funding and initial planning for State administration of Medicaid provider incentive payments under the American Recovery and Reinvestment Act (Recovery Act). Section 4201 of the Recovery Act authorizes a 100 percent Federal financial participation (FFP) match for State expenditures to Medicaid providers to incentivize the adoption and "meaningful use" of certified electronic health record (EHR) technology. In addition, States can receive a 90 percent FFP match to support their administrative costs associated with distributing the incentive payments to eligible Medicaid providers.

This memorandum highlights the key areas addressed in the letter, which includes a description of the process by which States can receive the 90 percent match for initial planning activities related to the administration of incentive payments. States may immediately request the 90 percent match for initial planning regarding the design and development of a State Medicaid HIT Plan (SMHP), and should submit and receive approval of a HIT Planning - Advance Planning Document prior to initiating planning activities and expending funds. Review of plan documentation will be interdisciplinary and conducted jointly by CMS and the Office of the National Coordinator for Health Information Technology (ONC).

The guidance in the Letter is described as "preliminary" and focuses on the planning aspect rather than the actual implementation of the SMHP. CMS intends to publish proposed regulations to address the steps outlined in the Letter by the end of the year.

Summary of Key Topics

Timeline for Implementing Incentive Payments. Certain regulatory and planning activities must take place before States can begin making incentive payments to providers:

- The Secretary must adopt an initial set of standards, implementation specifications, and certification criteria for standards for "certified EHR technology," which may be through an interim-final rule.
- The Secretary must define the "average allowable costs" appropriate for reimbursement (provider incentive payments can be paid at up to 85 percent of the federally-determined "net average allowable costs" of certified EHR technology, up to statutory limits).
- The Secretary must establish State responsibilities to track (as yet undefined) "meaningful use" of certified EHR technology, and States will need to engage in planning to ensure that they are able to track such "meaningful use."

- The Secretary must issue guidance on how a provider may confirm compatibility with State or Federal administrative management systems. Providers are not eligible for incentive payments unless the certified EHR technology is compatible with such systems. States risk making unallowable incentive payments before receiving this guidance.

CMS will work with States to determine when each State is ready to begin making payments, and expects to issue a proposed rule for implementing Section 4201 by the end of the year.

90 percent FPP Match for initial planning activities. Although the 100 percent match for provider incentive payments will not be available immediately, States can begin to receive the 90 percent match for some initial planning activities related to the administration of the incentive payments.

Eligible Activities. Planning activities "potentially" eligible for reimbursement are listed in a chart and include: Activities related to provider payment, oversight, and outreach; Planning activities; Outreach and Education Activities; Training/Meetings; Travel; Hardware; Software; and Oversight and Reports. Prior approval from CMS through submission of an Advance Planning Document is required for claiming the 90 percent match for these activities. States may request activities not listed in the chart based on their Advance Planning Document request with the approval of CMS' Central and Regional Offices (RO).

Compliance with Recovery Act criteria. States must demonstrate compliance with three criteria described under the Recovery Act in order to receive matching FPP for administration of the incentive payments:

- The State uses the funds for purposes of administering the incentive payments, including the tracking of meaningful use of certified EHR technology by Medicaid providers.
- The State conducts adequate oversight of the incentive program, including routine tracking of meaningful use attestations and reporting mechanisms.
- The State pursues initiatives to encourage adoption of certified EHR technology to promote health care quality and the exchange of healthcare information under Medicaid, subject to applicable laws and regulations governing such exchange, while ensuring privacy and security of data provided to its data exchange partners.

In order to ensure compliance with the above criteria, CMS expects States to: 1) receive prior approval of any initial planning activities eligible for the 90 percent match and 2) develop a SMHP describing the State's Medicaid incentive program and how it will integrate current and planned Medicaid HIT assets and fit within the larger State HIT/Health Information Exchange (HIE) roadmap. Guidance on each of these two processes is described in more detail below.

Prior Approval from CMS for initial HIT planning. As States begin the process of developing their SMHPs, they are eligible to receive the 90 percent match for initial HIT planning activities (such as initial planning on the design and development of the SMHP), after obtaining CMS' prior approval. States are expected to obtain prior approval for claiming a 90 percent match through submission and approval of a Recovery Act HIT Planning – Advance Planning Document (HIT P-APD), similar to the process used to claim enhanced matching rates for State MMIS through the MMIS P-APD. States should not merge the two processes since States and CMS must report separately on Recovery Act funding. Costs which cannot be specifically identified with Recovery Act HIT planning activities (such as staff costs associated with agency-wide functions) are matched at the 50-percent regular rate.

Development of the SMHP.

Minimum components. CMS expects the SMHP to contain at least the four components described below. The plan should contain any other information the State may decide will be useful in communicating how it plans to implement the section 4201 provisions (e.g., HIT point of contact, whether in the State Medicaid agency or elsewhere). The SMHP should generally focus on the Medicaid strategy for moving toward meaningful use of certified EHR technology and should be consistent with and complementary to the overall State HIT strategy developed under section 3013 of the Public Health Service (PHS) Act.

1. Baseline assessment of current ("As-Is") HIT environment. CMS requests that States develop a "HIT Landscape Assessment" that describes current HIT activities and their impact on Medicaid beneficiaries. The State should describe the extent of HIT and HIE activities underway within the Medicaid program. For example, a discussion of the State's MMIS capabilities to participate in health care data exchanges, and a summary of the Medicaid Information Technology Architecture (MITA) State Self-Assessment should be included. States should also examine data to assess current rates of EHR adoption.

2. Vision of the HIT Future ("To-be") Environment. This component describes each State's vision for what the State's "To-Be" HIT landscape would look like in 2014. States should initiate HIT discussions with a diverse group of stakeholders. The SMHP and road map should be consistent with State planning for section 3013 of the PHS Act to avoid duplicating efforts and ensure support of a unified approach to HIE. CMS will work with States to monitor and adjust plans as appropriate.

3. Specific Actions to Implement the Program. While CMS will be providing further details regarding eligibility for incentive payments and coordinating with the Medicare program to prevent duplicate payments, States can review the Recovery Act legislation and provide preliminary details regarding actions they believe will be necessary to implement the EHR incentive program. States should explain their preliminary views regarding specific actions for defining and verifying eligibility for the incentive payments, processing payments, and preventing duplicate incentive payments for those providers eligible under both Medicare and Medicaid.

4. HIT Road Map. The SMHP should include a Road Map that will serve as the State Medicaid agency's strategic pathway to move from the current HIT Landscape to the desired HIT "To-be" Vision. It should focus on the State Medicaid agency's role, describe how the State plans to oversee the provider incentive payments, and identify "clear, quantifiable benchmarks" (at least on an annual basis) that will allow the State and CMS to gauge progress toward achieving the "To-Be" Vision. The State is also expected to include their vision for Medicaid to become part of existing or planned Federal, regional, statewide, and/or local HIE with projected dates for achieving objectives where appropriate. State plans should "build off" of existing efforts to advance regional and State level HIE, facilitate the secure, electronic movement and use of health information according to nationally recognized standards, and move towards nationwide interoperability. States should also consider the changes that may be needed to transform its current MMIS into one capable of accommodating the future vision, consistent with MITA Framework 2.0. CMS recognizes that future steps may need to be adjusted due to unforeseen events.

Joint Review by CMS/ONC. The SMHP will be reviewed and approved by CMS regional and central offices prior to any activities described in the SMHP actually being implemented, as well as by ONC to avoid duplicating efforts under section 3013 of the PHS Act. CMS and ONC are working together internally and with CMS ROs to ensure a "consistent and coordinated strategy" for overall State HIT planning activities.

States should not begin implementation activities until CMS issues guidance on the Recovery Act HIT requirements, or States risk not receiving FFP for incentive payments. Additionally, inclusion of activities in the SMHP does not guarantee the availability of FFP through the administrative match.

Integration with overall State HIT strategy. States are expected to take a multidisciplinary approach when developing their SMHPs. The SMHP should be integrated with the Statewide plan for HIT developed under section 3013 of the PHS Act and under the direction of the designated State entity. States are instructed to work closely with their CMS RO, ONC, State officials responsible for coordinating HIT, and State designated entities throughout the planning process to reduce delays in implementing the SMHP.

Relationship between MMIS, MITA and HIT Adoption. CMS expects that data warehouses, decision support systems, and other components of State MMIS will play a large part in achieving States' Medicaid "To-Be" Vision for HIT and ensuring the meaningful use of EHR technology. States should evaluate the work necessary to implement section 4201 in relation to the changes planned for their MMIS/MITA over the same time frame. For example, there may be provider needs and training that cannot be paid for through the MMIS match, but that will be eligible under the section 4201 funding. Development and achievement of the SMHP should be closely linked and interdependent with each State's MMIS and MITA adoption.

Role of State Medicaid Agencies. CMS describes nine "critically important" tasks to be undertaken by all States in achieving HIT adoption. The tasks include participating in the development of a specific State roadmap for HIT adoption and use as it relates to Medicaid as well as the State's overall plan for HIE; providing forums and opportunities for input from stakeholders; arranging or providing technical assistance and training of Medicaid providers in the planning, adoption and use of EHRs, and informing providers about other resources such as the Regional Extension Centers. The listed activities are not automatically eligible for the 90 percent match – all planning and implementation activities must be approved by CMS.

Additional Oversight and Planning Activities. CMS is in the process of obtaining required OMB approval for draft documentation including the State Medicaid HIT Plan Preprint and the HIT Planning Advance Planning Document. CMS suggests that the templates will expedite States' ability to communicate effectively with the ROs and strongly suggests contacting the RO for assistance in this area. In addition, to assist States in reporting expenditures using the Medicaid and Children's Health Insurance Program Budget and Expenditure System, the CMS-64.10 report will include a new category for reporting 90 percent match for State administrative expenses associated with HIT. The category is to be completed for potentially eligible HIT planning activities and should not be used for MMIS 90 percent expenditures.

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Manatt continues to monitor the implementation of the Medicaid provider incentive program closely and will provide periodic updates as more information becomes available. For more information about this memo or about the implementation of the Medicaid Incentive program, please contact Bill Bernstein or Melinda Dutton in Manatt's New York office at 212-790-4500 or Lammot Du Pont in the Washington, D.C. office at 202-585-6577, or Timi Leslie in the San Francisco office at 415-291-7435.

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